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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Mark M. Stephenson

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07/19/2006

BANNER & WITCOFF

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SUITE 1100

WASHINGTON, DC 20001

EXAMINER

BHATIA, AJAY M

ART UNIT

PAPER NUMBER

2145

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/824,132

Applicant(s)

STEPHENSON ET AL.

Examiner

Ajay M. Bhatia

Art Unit

2145

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 6/05/06
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-13,15,19-22,24,26-32,34-38 and 45-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-13,15,19-22,24,26-32,34-38 and 45-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

***Response to Arguments***

Applicant's arguments with respect to claims 1-58 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 57 and 58 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has failed to point out support for newly amended claims limitations, which appear to not be fully supported by the specification.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5 and 35 are (in addition to any claims addressing port 80 and 8080) rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to

particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 5 recites the broad recitation wherein said open port is at least one of port 80 and port 8080, and the claim 1 recites port that is normally open to HTTP packets which is the narrower statement of the range/limitation.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2145

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,4-13,15,19-22,24,26-32,34-38 and 45-58 rejected under 35 U.S.C. 103(a) as being unpatentable over Alden et al. (U.S. Patent 6,101,543) in view of TunnelBuilder 4.01 for Windows Website (referred to as WinTB).

For claim 1, Alden teaches, a system for establishing communications across a firewall comprising:

- a communications network; (Alden, Col. 7 lines 30-42, figure 3)

- a first server within said communications network; (Alden, Col. 6 line 46 to Col. 7 line 17, figure3)

- a first computer separated from said communications network, said first computer sending information to said first server; (Alden, Col. 6 line 46 to Col. 7 line 17, figure3)

- and, a second computer separated from said communications network, said second computer receiving information from said first server related to the information sent from said first computer; (Alden, Col. 6 line 46 to Col. 7 line 17, figure3)

- wherein at least one of said first computer and said second computer are separated from said communications network by at least one firewall; (Alden, Col. 6 line 46 to Col. 7 line 17, figure3)

wherein said first computer transmits a message to said first server with an encrypted identification of said second computer; (Alden, Col. 6 line 46 to Col. 7 line 17, Col. 8 lines 31-56, figure3)

wherein said first server decrypts said encrypted identification to an unencrypted identification of said second computer and forwards said message to said second computer using said unencrypted identification; (Alden, Col. 6 line 46 to Col. 7 line 17, Col. 8 lines 31-56, figure3)

wherein said first computer transmits a hypertext transfer protocol (HTTP) and wherein said HTTP message is transmitted through a firewall port that is normally open to HTTP packets.

WinTB teaches, wherein said first computer transmits a hypertext transfer protocol (HTTP) message and wherein said HTTP message is transmitted through a firewall port that is normally open to HTTP packets. [IANA assigns port 80 as HTTP port](see [www.nts.com](http://www.nts.com) website, Firewalls a problem? Looks like a job for ... SuperTunnel!, port 80)

[www.nts.com](http://www.nts.com) is compatible with Alden because Alden [www.nts.com](http://www.nts.com) is design to be used with tunneling software in manner to adapt the system to work with firewalls

both [www.nts.com](http://www.nts.com) and Alden are in the field of tunnel network communication

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the system of Alden with that of [www.nts.com](http://www.nts.com) website, because Alden provides for motivation to combine Alden and [www.nts.com](http://www.nts.com) in that the relay may be dynamically configured to forward packets between transport layer connection and transport layer connection. The tunnel relay replaces... (Col. 6 lines 30-45) and [www.nts.com](http://www.nts.com) define these transport and port layers as HTTP. [www.nts.com](http://www.nts.com) provides the motivation to use HTTP because it prevents from hackers attacking the network via an open port.

For claim 2, Alden-[www.nts.com](http://www.nts.com) teaches, wherein said first computer transmits said message to said first server with an encrypted message and said server transmits said encrypted message to said second computer. (Alden, Col. 8 lines 31-56)

For claim 4, Alden-[www.nts.com](http://www.nts.com) teaches, wherein said first computer further includes a first client and said second computer includes a second client and wherein each of said first client and said second client use an open firewall port that is normally open to HTTP packets to access said communications network. (Alden, Col. 6 line 46 to Col. 7 line 17) (see [www.nts.com](http://www.nts.com) website, Firewalls a problem? Looks like a job for ... SuperTunnel!, port 80)

Art Unit: 2145

For claim 5, Alden-www.nts.com teaches, wherein said open port is at least one of port 80 and port 8080. (see www.nts.com website, Firewalls a problem? Looks like a job for ... SuperTunnel!, port 80)

For claim 6, Alden-www.nts.com teaches, further comprising a second server that operates in the event of an error with said first server. (Alden, Col. 6 line 45 to Col. 7 line 17) It would have been obvious to one of ordinary skill in the art at the time of the invention was made to implement a backup server with the system of Alden-www.nts.com because the use of backup system when a problem occurs is well known in the computing art, in addition Alden discloses that the system is made up of not which are interchangeable as nodes.

For claim 7, Alden-www.nts.com teaches, wherein the information received at said second computer has the same content as the information sent from said first computer. (Alden, Col. 6 line 45 to Col. 7 line 17)

For claim 8, Alden-www.nts.com teaches, wherein the information received at said second computer has different but related content as the information sent from said first computer. (Alden, Col. 6 line 45 to Col. 7 line 17)

For claim 9, Alden-www.nts.com teaches, further comprising a second server, said second server being connected to said network, wherein said second server replaces



Art Unit: 2145

said first server when an error occurs between said first server and at least one of said first computer and said second computer. (Alden, Col. 6 line 45 to Col. 7 line 17) It would have been obvious to one of ordinary skill in the art at the time of the invention was made to implement a backup server with the system of Alden-www.nts.com because the use of backup system when a problem occurs is well known in the computing art, in addition Alden discloses that the system is made up of not which are interchangeable as nodes.

For claim 10, Alden-www.nts.com teaches, further comprising a second server, said second server being connected to said network, wherein said second server replaces said first server when an error occurs with said first server. (Alden, Col. 6 line 45 to Col. 7 line 17) It would have been obvious to one of ordinary skill in the art at the time of the invention was made to implement a backup server with the system of Alden-www.nts.com because the use of backup system when a problem occurs is well known in the computing art, in addition Alden discloses that the system is made up of not which are interchangeable as nodes.

For claim 11, Alden-www.nts.com teaches, further comprising: at least a third computer, wherein at least said third computer receives information from said first server related to the information sent from said first computer, wherein at least said third computer is separated from said communication network by at least one of said first or at least a second firewall. (Alden, Col. 6 line 45 to Col. 7 line 17, figure3)

For claim 12, Alden-www.nts.com teaches, wherein a communication pathway between said first server and at least one of said first computer and said second computer is kept open by repeated transmissions from said first server. (Alden, Col. 6 line 45 Col. 7 line 17, figure3)

For claim 13, Alden-www.nts.com teaches, wherein a communication pathway between said first server and at least one of said first computer and said second computer is kept open by repeated transmissions from at least one of said first computer and said second computer. (Alden, Col. 6 line 45 Col. 7 line 17, Col. 13 Col. 42-50)

For claim 15, Alden-www.nts.com teaches, the system according to claim 1, wherein said first computer transmits said message to said first server with a header, the header including at least one of an encrypted header, an encrypted size, an encrypted CRC, an encrypted header length, an encrypted message length, an encrypted asset identifier, an encrypted name of at least one client, and an encrypted application ID, an encrypted time and date stamp, an encrypted location ID, an encrypted message types, an encrypted attachment identifier, an encrypted packet number, and an encrypted pre-compressed data size for an associated message. (Alden, Col. 8 lines 31-56)

Claims 16-58 disclose the same invention with similar claim limitations therefore the rejection applied to claims 1-15 applies equally as well to claims 16-58.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay M. Bhatia whose telephone number is (571)-272-3906. The examiner can normally be reached on M-F 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571)272-3933. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AB

  
**JASON CARDONE**  
SUPERVISORY PATENT EXAMINER